

1 AN ACT relating to crimes and punishments.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 439.3401 is amended to read as follows:

- 4 (1) As used in this section, "violent offender" means any person who has been
5 convicted of or pled guilty to the commission of:
- 6 (a) A capital offense;
 - 7 (b) A Class A felony;
 - 8 (c) A Class B felony involving the death of the victim or serious physical injury
9 to a victim;
 - 10 (d) An offense described in KRS 507.040 or 507.050 where the offense involves
11 the killing of a peace officer, firefighter, or emergency medical services
12 personnel while the peace officer, firefighter, or emergency medical services
13 personnel was acting in the line of duty;
 - 14 (e) A Class B felony involving criminal attempt to commit murder under KRS
15 506.010~~[if the victim of the offense is a clearly identifiable peace officer,~~
16 ~~firefighter, or emergency medical services personnel acting in the line of~~
17 ~~duty.]~~ regardless of whether an injury results;
 - 18 (f) The commission or attempted commission of a felony sexual offense
19 described in KRS Chapter 510;
 - 20 (g) Use of a minor in a sexual performance as described in KRS 531.310;
 - 21 (h) Promoting a sexual performance by a minor as described in KRS 531.320;
 - 22 (i) Unlawful transaction with a minor in the first degree as described in KRS
23 530.064(1)(a);
 - 24 (j) Human trafficking under KRS 529.100 involving commercial sexual activity
25 where the victim is a minor;
 - 26 (k) Criminal abuse in the first degree as described in KRS 508.100;
 - 27 (l) Burglary in the first degree accompanied by the commission or attempted

1 commission of an assault described in KRS 508.010, 508.020, 508.032, or
2 508.060;

3 (m) Burglary in the first degree accompanied by commission or attempted
4 commission of kidnapping as described in~~[prohibited by]~~ KRS 509.040;

5 (n) **Burglary in the first degree as described in KRS 511.020(1)(a);**

6 **(o) Robbery in the first degree;**~~[or]~~

7 **(p)**~~[or]~~ Incest as described in KRS 530.020(2)(b) or (c);

8 **(q) Assault in the second degree as described in KRS 508.020(1)(b) or (c); or**

9 **(r) Wanton endangerment in the first degree as described in Section 2 of this**
10 **Act where the offense involves the discharge of a firearm.**

11 The court shall designate in its judgment if the victim suffered death or serious
12 physical injury.

13 (2) A violent offender who has been convicted of a capital offense and who has
14 received a life sentence ~~[and has not been sentenced to twenty-five (25) years~~
15 ~~without parole or imprisonment for life without benefit of probation or parole]~~, or
16 a Class A felony and receives a life sentence, or to death and his or her sentence is
17 commuted to a life sentence shall not be released on probation or parole until he or
18 she has served at least twenty (20) years in the penitentiary. Violent offenders may
19 have a greater minimum parole eligibility date than other offenders who receive
20 longer sentences, including a sentence of life imprisonment.

21 (3) (a) A violent offender who has been convicted of a capital offense or Class A
22 felony with a sentence of a term of years or Class B felony shall not be
23 released on probation or parole until he **or she** has served at least eighty-five
24 percent (85%) of the sentence imposed.

25 (b) A violent offender who has been convicted of a violation of KRS 507.040
26 where the victim of the offense was clearly identifiable as a peace officer, a
27 firefighter, or emergency medical services personnel, and the victim was

1 acting in the line of duty shall not be released on probation or parole until he
2 or she has served at least eighty-five percent (85%) of the sentence imposed.

3 (c) A violent offender who has been convicted of a violation of KRS 507.040 or
4 507.050 where the victim of the offense was a peace officer, a firefighter, or
5 emergency medical services personnel, and the victim was acting in the line
6 of duty shall not be released on probation or parole until he or she has served
7 at least fifty percent (50%) of the sentence imposed.

8 (d) Any offender who has been convicted of a homicide or fetal homicide offense
9 under KRS Chapter 507 or 507A in which the victim of the offense died as
10 the result of an overdose of a Schedule I controlled substance and who is not
11 otherwise subject to paragraph (a), (b), or (c) of this subsection shall not be
12 released on probation, shock probation, parole, conditional discharge, or other
13 form of early release until he or she has served at least fifty percent (50%) of
14 the sentence imposed.

15 (e) A violent offender who has been convicted of a Class C felony violation of
16 Section 2 of this Act or assault in the second degree as described in KRS
17 508.020(1)(b) or (c) shall not be released on probation, shock probation,
18 parole, conditional discharge, or other form of early release until he or she
19 has served at least fifty percent (50%) of the sentence imposed.

20 (4) A violent offender shall not be awarded any credit on his or her sentence authorized
21 by KRS 197.045(1)(b)1. In no event shall a violent offender be given credit on his
22 or her sentence if the credit reduces the term of imprisonment to less than eighty-
23 five percent (85%) of the sentence.

24 (5) This section shall not apply to a person who has been determined by a court to have
25 been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard
26 to the offenses involving the death of the victim or serious physical injury to the
27 victim. The provisions of this subsection shall not extend to rape in the first degree

1 or sodomy in the first degree by the defendant.

2 (6) This section shall apply only to those persons who commit offenses after July 15,
3 1998.

4 (7) For offenses committed prior to July 15, 1998, the version of this statute in effect
5 immediately prior to that date shall continue to apply.

6 (8) The provisions of subsection (1) of this section extending the definition of "violent
7 offender" to persons convicted of or pleading guilty to robbery in the first degree
8 shall apply only to persons whose crime was committed after July 15, 2002.

9 ➔Section 2. KRS 508.060 is amended to read as follows:

10 (1) A person is guilty of wanton endangerment in the first degree when, under
11 circumstances manifesting extreme indifference to the value of human life, he or
12 she wantonly engages in conduct which creates a substantial danger of death or
13 serious physical injury to another person.

14 (2) Wanton endangerment in the first degree is a Class D felony, unless the person
15 discharges a firearm in the commission of the offense, in which case it is a Class
16 C felony.

17 ➔Section 3. KRS 635.020 is amended to read as follows:

18 (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a
19 child before the court has committed a felony other than those described in
20 subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall
21 initially proceed in accordance with the provisions of this chapter.

22 (2) If a child charged with a capital offense, Class A felony, or Class B felony, had
23 attained age fourteen (14) at the time of the alleged commission of the offense, the
24 court shall, upon motion of the county attorney made prior to adjudication, and after
25 the county attorney has consulted with the Commonwealth's attorney, that the child
26 be proceeded against as a youthful offender, proceed in accordance with the
27 provisions of KRS 640.010.

1 (3) If a child charged with a Class C or Class D felony has on one (1) prior separate
2 occasion been adjudicated a public offender for a felony offense and had attained
3 the age of sixteen (16) at the time of the alleged commission of the offense, the
4 court shall, upon motion of the county attorney made prior to adjudication, and after
5 the county attorney has consulted with the Commonwealth's attorney, that the child
6 be proceeded against as a youthful offender, proceed in accordance with the
7 provisions of KRS 640.010.

8 (4) (a) If a child charged with a felony in which a firearm, whether functional or not,
9 was used by the child in the commission of the offense had attained the age of
10 fourteen (14) years at the time of the commission of the alleged offense, the
11 court shall, upon motion of the county attorney made prior to adjudication,
12 and after the county attorney has consulted with the Commonwealth's
13 attorney, that the child be proceeded against as a youthful offender, proceed in
14 accordance with KRS 640.010.

15 (b) 1. Any other provision of KRS Chapters 610 to 645 to the contrary
16 notwithstanding, if a child charged with a Class A, B, or C felony in
17 which a firearm, whether functional or not, was used in the
18 commission of the offense had attained the age of fifteen (15) years at
19 the time of the commission of the alleged offense, he or she shall be
20 transferred to the Circuit Court for trial as an adult if, following a
21 preliminary hearing, the District Court finds probable cause to believe
22 that:

23 a. The child committed a Class A, B, or C felony;

24 b. A firearm was used in the commission of that felony; and

25 c. The child was fifteen (15) years of age or older at the time of the
26 commission of the alleged felony.

27 2. After consulting with the county attorney, the Commonwealth's

1 attorney may transfer the child back to District Court if the
2 Commonwealth's attorney determines that it is in the best interest of
3 the public and the child to do so.

4 3. If convicted in the Circuit Court, he or she shall be subject to the same
5 penalties as an adult offender, except that until he or she reaches the
6 age of eighteen (18) years, he or she shall be confined in a facility for
7 juveniles or for youthful offenders, unless the provisions of KRS
8 635.025 apply or unless he or she is released pursuant to expiration of
9 sentence or parole, and at age eighteen (18) he or she shall be
10 returned to the sentencing Circuit Court for proceedings consistent
11 with KRS 640.030(2).

12 4. If convicted in the Circuit Court and he or she is returned to the
13 sentencing Circuit Court for proceedings consistent with KRS
14 640.030(2), her or she shall not be eligible for probation or conditional
15 discharge.

16 (5) If a child previously convicted as a youthful offender under the provisions of KRS
17 Chapter 640 is charged with a felony allegedly committed prior to his or her
18 eighteenth birthday, the court shall, upon motion of the county attorney made prior
19 to adjudication, and after the county attorney has consulted with the
20 Commonwealth's attorney, that the child be proceeded against as a youthful
21 offender, proceed in accordance with the provisions of KRS 640.010.

22 (6) A child who is charged as is provided in subsection (2) of this section and is also
23 charged with a Class C or D felony, a misdemeanor, or a violation arising from the
24 same course of conduct shall have all charges included in the same proceedings;
25 and the court shall, upon motion of the county attorney made prior to adjudication,
26 and after the county attorney has consulted with the Commonwealth's attorney, that
27 the child be proceeded against as a youthful offender, proceed in accordance with

1 the provisions of KRS 640.010.

- 2 (7) If a person who is eighteen (18) or older and before the court is charged with a
3 felony that occurred prior to his ***or her*** eighteenth birthday, the court shall, upon
4 motion of the county attorney made prior to adjudication, and after the county
5 attorney has consulted with the Commonwealth's attorney, that the child be
6 proceeded against as a youthful offender, proceed in accordance with the provisions
7 of KRS 640.010.
- 8 (8) All offenses arising out of the same course of conduct shall be tried with the felony
9 arising from that course of conduct, whether the charges are adjudicated under this
10 chapter or under KRS Chapter 640 and transferred to Circuit Court.